

IN THE COURT OF APPEALS OF IOWA

No. 0-862 / 10-1629
Filed December 22, 2010

**IN THE INTEREST OF C.P. and K.P.,
Minor Children,**

**C.P. and K.P., Minor Children,
Appellants.**

Appeal from the Iowa District Court for Dallas County, Virginia Cobb,
District Associate Judge.

Through their attorney/guardian ad litem, two children appeal the juvenile court's order denying their request to terminate their parents' parental rights.

REVERSED AND REMANDED.

Michelle Saveraid of the Youth Law Center, Des Moines, for appellants
minor children.

Stephie N. Tran, Des Moines, for appellee father.

Steven E. Clarke of Pargulski, Hauser & Clarke, Des Moines, for appellee
mother.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant
Attorney General, Wayne Reisetter, County Attorney, and Sean Wieser,
Assistant County Attorney, for appellant State.

Considered by Mansfield, P.J., and Danilson and Tabor, JJ.

MANSFIELD, P.J.

Through their attorney/guardian ad litem, two children appeal the juvenile court's decision not to terminate their parents' parental rights. Because we find termination would be in the best interests of the children, see Iowa Code § 232.116(2) (2009), and the parent-child bond is insufficient to countervail our assessment of these best interests, see *id.* § 232.116(3), we reverse and remand.

I. Background Facts and Proceedings.

Stacey and Ryan are the parents of two boys, C.P. (born in 2006) and K.P. (born in 2007). K.P. has cerebral palsy.

Stacey and Ryan have a history of domestic violence and drug abuse. Prior to K.P.'s birth, they had been involved with the Iowa Department of Human Services (DHS) as the result of their methamphetamine use and leaving C.P. in the care of a sex offender, and C.P. was removed from the home for a period of time. In July 2009, after Ryan assaulted Stacey several times in front of the children, a protective order was entered that prohibited Ryan from contacting Stacey and the children.

In August 2009, Stacey left C.P. and K.P. with a relative. After a house fire, in which a one-year-old child of the relative died, the children were moved twice to other relatives' homes. In December 2009, the children's relatives contacted DHS because they were unable to care for them. When DHS workers could not locate Stacey or Ryan, an *ex parte* order of removal was issued, and the children were placed with a foster family, where they remain today. Ultimately, the children were adjudicated to be in need of assistance. Stacey

was unemployed and did not have a stable place to live. Ryan was also unemployed and staying with a family member.

At the time the boys were placed in foster care, their medical needs had not been taken care of. Both of them were behind on their immunizations, which were brought up to date. C.P. began play therapy. K.P. was fitted for braces and began occupational and physical therapy, and also began exercises every morning and afternoon at home. K.P. also had tubes put in his ears due to recurring ear infections, and there was a possible diagnosis of asthma. Both boys also had problems sleeping at night, possibly because of nightmares from the house fire.

Although the protective order was still in force, Stacey and Ryan still saw one another, and Stacey became pregnant with her and Ryan's third child, expected in September 2010.

In January 2010, a DHS worker recommended that Stacey begin supervised visitation, participate in mental health services, and submit to random drug testing. Stacey began regularly exercising supervised visitation with the boys. She did not begin mental health services or drug testing until May, but then consistently went to her therapy and had a clean drug test. She also completed a parenting class.

Ryan did not immediately contact DHS and after he did, in March a DHS worker recommended that he participate in mental health services and submit to random drug testing. In May, the protective order was no longer in effect, and Ryan gave a clean drug screen and began exercising supervised visitation with the boys. In June, Ryan also submitted to another drug screen, but refused to

submit to a hair stat test. Ryan admits he was using methamphetamine as recently as January 2010. Ryan did not complete a parenting class as recommended.

In May, Stacey and Ryan moved into a five-bedroom home in Greene County. They pay \$250 a month for rent, but have no written lease. Ryan testified they have an understanding that they will start paying \$350 a month and will be able to purchase the home within three years by making the foregoing payments.

Initially, transportation was an issue for the family because neither Stacey nor Ryan had a driver's license, and there was additional travel time to the Des Moines area, where many of the medical appointments and the supervised visitation took place. The following month, Ryan obtained his driver's license and a reliable car.

In June, Stacey and Ryan began attending couple's therapy. Although Ryan signed up for an anger management class at the end of that month, he did not attend because he was getting his driver's license that day. As of the termination hearing, he had still not taken an anger management class.

At the time of the hearing, Ryan had been working part-time and earning approximately \$200 per week. He attributed his inability to work full-time to the number of appointments that he had relating to the children.

A petition to terminate Stacey and Ryan's parental rights was filed on June 20, 2010, and alleged that their rights should be terminated under Iowa Code section 232.116(1)(d), (h), and (i). A permanency and termination hearing was held on August 10 and 16, 2010. The children's foster mother testified to the

children's medical needs and behavioral issues. Among other things, she said that the children have problems after visitation. Both of them are "very defiant." C.P., for example, has problems with bedwetting. This is confirmed by his therapist, who wrote, "[W]hen visitation increased, his wetting regressed." C.P. also claims that Ryan "hurts me."¹

The foster mother also testified that since they arrived in the home in December 2009, both C.P. and K.P. have awakened screaming or crying in the night, K.P. typically five times a night. The foster parents rub K.P.'s back or comfort him, and then he is able to fall back asleep, but sometimes only for twenty or thirty minutes. K.P. also requires additional time for daily therapy in the home because of his cerebral palsy.

The foster mother testified that she and her husband were "absolutely" willing to adopt C.P. and K.P.

The family team coordinator who supervised Stacey's and Ryan's visits also testified. She said the quality of the visits had clearly improved, but she did not believe the children could be returned at the present time. Stacey still had anger management issues and could "snap" pretty suddenly. Stacey and Ryan continued to bicker during visits. Stacey also had trouble disciplining the children. The family team coordinator was unable to predict when visits could move to unsupervised, let alone when the children could go back to their parents. She did say that "possibly" the parents would ultimately be in a position to get

¹ Letters from K.P.'s and C.P.'s daycare teachers also noted specific examples of improper behavior and unmet needs after they returned from supervised visits. (Typically, K.P. and C.P. were transported to and from daycare for their supervised visits.) The teachers concluded that they had seen "regressions" after the visits.

their children back. She said the children were generally attached to the parents and wanted to be with them, but K.P. was “a little more hesitant with Ryan.”

The DHS worker assigned to the case testified that Stacey and Ryan were offered multiple services, but they chose not to take advantage of those services until spring 2010. Because Stacey and Ryan only began accessing services within the months before the hearing, she still had concerns regarding their past drug usage and volatile relationship, their employment situation, and the lack of a support system. She was concerned they would not take care of the children’s medical needs, especially because they had a history of not taking K.P. to his occupational therapy appointments. Additionally, she was concerned that Stacey recently began a relationship with her father, who was on the sex abuse registry and who was not to take care of the boys. She testified that both parents blamed others for the removal of their children, denied the things they had done, and refused to accept their mistakes and make actual changes, which led her to believe they had not intrinsically changed. She testified that the children could not be returned to their parents’ care, either now or in six months.

Stacey testified that she was initially angry and not fully cooperative with services, and recognized she had made mistakes. She said she had been doing what DHS asked of her by completing a parenting class and attending individual therapy and couple’s counseling. Although twenty-four years old, she had never had a driver’s license and had very little experience driving, but was studying to get one.

Ryan testified at the termination hearing that he had a forthcoming court appearance because he had failed to perform some required jail time. Again, he blamed this on the appointments related to the children.

On September 21, 2010, the juvenile court issued its ruling. It found both Stacey and Ryan “came from backgrounds that did not foster stable marital or family relationships,” were without a community or family support system, and had “extensive criminal records, as well as histories of substance abuse.” Both were initially “resistant and somewhat hostile regarding participation in services” and “needed to stop denying the events that led to the children being removed and their responsibility for it.” The court stated,

It is clear to the court that removal at the time was in the children’s best interest. It is also clear that Stacey and Ryan needed services, both personally and as parents, as much as [the children]. It is also clear that the boys cannot be returned to the parents at the time, but the court is not convinced, given the significant strides made by Stacey and Ryan, that the boys could not go home in six months.

The court agrees with Ms. Hoffman that Ryan and Stacey must have follow-through to show that these improvements are permanent and that they will continue. This court does not want to sever what is clearly a close bond unless there is no other choice.

The permanency goal is reunification.

The children are not able to be returned to their parents at this time, but, if the parents’ positive efforts continue, it is likely they may be returned to the parents in six months.

. . . .

The court finds there is clear and convincing evidence that the termination would be detrimental to the children at this time due to the closeness of the parent-child relationship. . . .

If however, the parents continue to be unable to provide a stable, loving and safe home life, with provision for their mental, physical and emotional needs, the court must recognize those needs as being superior to the emotional bond.

Finally, the court directed the State to prepare a permanency order. On October 7, 2010, the court filed a permanency order. That order indicated the

children would be able to return home if the parents continued to be involved in services and they maintained a bond with the children, and ordered that services be continued, specifying anger management class for Ryan, a hair stat test for Ryan, and couple's counseling and parenting classes. The children, through their attorney/guardian ad litem, appeal both the denial of termination and the permanency order. The State joins in the appeal.

II. Standard of Review.

Our review is de novo. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). Although we give weight to the juvenile court's factual findings, we are not bound by them. *Id.* Our primary concern is the best interests of the children. *Id.*

III. Termination of Parental Rights.

There is no dispute that grounds to terminate Stacey and Ryan's parental rights were proved under section 232.116(1)(d) and (i). The juvenile court so stated. The juvenile court declined to terminate only because of its findings under sections 232.116(2) and (3).

The statutory framework for the termination of parental rights is set forth in Iowa Code chapter 232.116. *In re P.L.*, 778 N.W.2d 33, 38 (Iowa 2010). Once a ground for termination has been proved under section 232.116(1), the court must determine whether termination is in the children's best interests under section 232.116(2). *Id.* In considering a child's best interests, "the court shall give primary consideration to the child's safety, to the best placement for furthering the long-term nurturing and growth of the child, and to the physical, mental, and emotional condition and needs of the child." *Id.* at 39 (quoting Iowa Code § 232.116(2)). Under subsection (3), the court need not terminate parental rights

if “[t]here is clear and convincing evidence that the termination would be detrimental to the child at the time due to the closeness of the parent-child relationship.” *Id.* (citing Iowa Code § 232.116(3)(c)).

The children specifically assert that termination of Stacey and Ryan’s parental rights is in their best interests. The juvenile court conceded that this is a difficult case. The conflict between providing the children a safe, stable, and loving home as soon as possible and the parents’ rights to raise their children is readily apparent here. See *P.L.*, 778 N.W.2d at 38 (“Iowa’s statutory scheme recognizes the conflict between a parent’s interest in continuing to raise their child as part of their family and the State’s interest in providing a stable, loving homelife for the child as soon as possible.”).

Having said that, we believe the juvenile court placed too much emphasis on the parents’ admittedly laudable progress in overcoming their own personal challenges while giving insufficient weight to the children’s needs. The juvenile court acknowledged that “[t]he children are not able to be returned to their parents at this time,” but added that it was “not convinced” that they “could not go home in six months.” This double negative, we believe, is not enough to demonstrate that the best interests of the child requirement of Iowa law has been met.

In considering whether to terminate, we are to give primary consideration to the children’s safety; the best placement for furthering their long-term nurturing and growth; and the physical, mental, and emotional condition and needs of the children. *Id.* at 39 (quoting Iowa Code § 232.116(2)). C.P. and K.P. are doing well in a preadoptive placement. They have been out of their parents’ care since

August 2009. It has been noted from several sources that the children regress following visitation with their parents. C.P.'s bedwetting is a specific cause for concern. Both children present parenting challenges, especially K.P. because of his cerebral palsy, which requires daily therapy, and his nightmares.

Much of the parents' progress occurred after DHS notified them at the beginning of June that it would be recommending termination of parental rights. And many issues remain. Stacey planned to be a full-time mother, and was expecting another child, but cannot drive in order to take her children to activities or appointments. Ryan works only part-time and earns only \$200 per week. Despite two charges of domestic violence, Ryan has not taken anger management class. He also has an unresolved issue as to weekends he was supposed to have served in jail. He refused a drug test in June 2010 and admitted to methamphetamine use as recently as January 2010. He impregnated Stacey while under a no-contact order. The parents have a seemingly stable housing arrangement, but it is predicated on the willingness of an absentee landlord to let them keep using a five-bedroom house on a month to month basis for \$250 a month. No professional was willing to offer the opinion that the parents are capable of caring for C.P. and K.P. now, or even that they would be able to do so within a reasonable period of time.

Thus, we find termination of parental rights is in the best interests of C.P. and K.P. "It is well-settled law that we cannot deprive a child of permanency after the State has proved a ground for termination under section 232.116(1) by hoping someday a parent will learn to be a parent and be able to provide a stable home for the child." *Id.* at 41.

The juvenile court also found “the closeness of the parent-child relationship” as a reason not to terminate in this case. See Iowa Code § 232.116(3). We are troubled by the juvenile court’s conclusion, “This court does not want to sever what is clearly a close bond unless there is no other choice.” We agree the evidence of a close bond is there. But a close bond by itself is not enough. Rather, the proper standard requires that we must find “clear and convincing evidence that the termination would be detrimental to the child[ren] at the time due to the closeness of the parent-child relationship.” *Id.* § 232.116(3)(c). We are not convinced. Although the bond is a factor weighing against termination, we cannot conclude termination on balance would be “detrimental” to these young children who need more stability than their parents can offer.

This is not to minimize the significant progress made, especially by Stacey. We would be hard-pressed to dispute the juvenile court’s characterization of this matter as “the hardest termination case I have ever had to hear.” Yet when this case is seen through the lens of the children’s best interests, we must conclude that termination of parental rights is the appropriate outcome under section 232.116 as enacted by the General Assembly. Because we find the juvenile court should have terminated parental rights, we do not reach the children’s appeal of the terms and conditions of the permanency order. We reverse and remand for further proceedings consistent with this opinion.

REVERSED AND REMANDED.